



The Treaty on Prohibition of Nuclear Weapons

1. Introduction

On 20th September 2017, South African President Jacob Zuma was amongst 35 world leaders to sign the *Treaty on the Prohibition of Nuclear Weapons* at the United Nations in New York. The treaty was adopted on 7th July 2017 by a vote of 122 for, with one against (Netherlands) and one abstaining (Singapore). 69 members of the General Assembly were not present to vote, including all the NATO countries (except the Netherlands), together with the countries possessing nuclear weapons, which had withdrawn from the negotiations around the treaty before it came to the vote. North Korea was the only country possessing nuclear weapons which voted for the treaty. SA, together with Austria, Nigeria, Brazil, Mexico and Ireland played a significant role in harnessing support for the treaty, and the Holy See, Guyana and Thailand have not only signed it but have also ratified it.

Several countries with nuclear weapons, including the USA, France, Russia and the UK, have indicated that they will not sign it as the treaty is contrary to their deterrence policies. In a note they pointed out that since the adoption they have not participated in the negotiations around the treaty, and they have declared that they would not sign or ratify or become a party to it. In a joint statement, the USA, UK and France said that “a purported ban on nuclear weapons that does not address the security concerns that continue to make nuclear deterrence necessary cannot result in the in the elimination of a single nuclear weapon, and will not enhance any country’s security.”¹ Some observers also point out that the treaty is undermined by the fact that there is no binding mechanism for enforcement, other than possible economic sanctions, and thus while it would be a legally binding document, it will be unenforceable.

1.1. How treaties take effect

For purposes of clarity it is worthwhile to distinguish briefly the different stages that an international treaty goes through before it takes full effect. Firstly, after various rounds of negotiations aimed at securing maximum agreement on the purpose and content of the treaty, it will be voted upon by all the member states of the UN General Assembly. If a majority are in favour, it is **adopted** and proceeds to the second stage – **signature**. Those nations that intend to make the treaty binding on themselves, or who intend to carry out obligations imposed by it, signify this by signing it, as Mr Zuma did.

However, signature is merely a demonstration of good faith. It is the third stage, **ratification**, which binds a nation to the terms of the treaty. Ratification takes place according to a country’s own constitutional requirements; in SA’s case it requires approval by Parliament and may, depending on the content of the treaty, involve the tabling of a Bill and its adoption as an Act.

If too few countries ratify a treaty there is no point in allowing it to come into effect, so it is customary to have a threshold which, once reached, **brings it into effect** and makes its provisions binding on the countries that have ratified it. In the present case the number is 52.

Once a treaty has come into effect it is still possible for nations to become party to it, even though they will not have the opportunity to negotiate or influence its terms. ‘Joining’ an existing treaty is known as **accession**. Post-1994, SA acceded to a number of international treaties which it had rejected during the Apartheid-era.

Lastly, even after it comes into effect, a treaty binds only those nations that have ratified it; they

become known as the '**states party** or **parties**' to the treaty.

2. Background

The signing of this treaty comes amidst growing concern around North Korea's firing of nuclear-capable missiles and the ongoing question of Iran's nuclear capability. The UN Secretary-General alluded to this at the signing event, and spoke of the risks posed by the continued existence of nuclear weapons, including the catastrophic humanitarian and environmental consequences of their use. Archbishop Paul Gallagher, representing the Holy See at the signing event, also mentioned North Korea. He said: "The rising tensions over North Korea's growing nuclear program are of special urgency. The international community must respond by seeking to revive negotiations. The threat or use of military force has no place in countering proliferation, and the threat or use of nuclear weapons in countering nuclear proliferation is deplorable."²

Already in October 2016, during the negotiations on the treaty, the SA government had argued: "This decision is particularly important at a time of increased international tension that increases the risk of the use of these weapons, whether by accident or on purpose."³ SA noted that this situation made the prohibition of nuclear weapons more compelling. Biological and chemical weapons were already prohibited, and this treaty would be an important step in prohibiting the remaining group of weapons of mass destruction. Some 15 000 nuclear weapons are in existence currently.

3. Content of the Treaty

The ten page treaty is the outcome of decades of deliberations in line with the first UN Resolution in this regard, adopted just over 70 years ago. It notes that the *Nuclear Non-Proliferation Treaty* of 1968 contains only partial prohibitions and 'nuclear weapon-free zone' treaties prohibit nuclear weapons only within certain geographical areas. The new treaty, however, prohibits the full range of nuclear weapon related activities, prohibiting any State party from developing, testing, producing, manufacturing, acquiring, possessing or stock-piling nuclear weapons or any

other nuclear explosive devices. It also forbids State parties to use such weapons, or to allow them to be stationed, installed or deployed in their territory, or to be involved in transferring such weapons and devices. Any State party which has weapons or devices on its territory belonging to another country must ensure their prompt removal. The treaty also enjoins State parties which possess such weapons or devices to immediately remove them from operational status and to destroy them as soon as possible.

In addition, it recognises the disproportionate impact of nuclear weapon activities on indigenous communities. Any State party that has either used or tested such weapons and devices will be expected to provide adequate assistance to affected parties in order to assist victims, as well as providing remedies for environmental damage.⁴ In all of this, the treaty expresses compliance with existing law, and with various resolutions of the UN dating back to the first resolution in this regard of 24th January 1946. It complies with international human rights law and international humanitarian law; and it underlines the 'inalienable right' of States to the peaceful use of nuclear energy.

4. South Africa's Stance

The SA government has pointed out that "this treaty would be an important step towards addressing the glaring gap in the international legal architecture on the legality of nuclear weapons."⁵

President Zuma's signature is an act of political continuity in this area. In 1989 South Africa voluntarily gave up its nuclear weapons program. (One of the other signatories was Kazakhstan, which also formerly possessed nuclear weapons but gave them up voluntarily in 1991 after gaining independence from the then Soviet Union.) SA's Minister of International Relations, Ms Maite Nkoana-Mashabane, said that SA wanted to ensure a safe world free of nuclear weapons, but reserved the right to hold onto the technology for peaceful purposes, including nuclear energy and medical uses and research; for example, SA was a leader in the creation of medical isotopes.⁶

SA's representative at the UN spoke of the event as "a day when the UN and civil society had taken extraordinary steps to rid the world of the nuclear

threat.”⁷ SA also believes that the treaty would “emphasise the urgency of the implementation of nuclear disarmament obligations and related commitments during a time of heightened international tension.” It has also said that the treaty would be an appropriate response to the findings of the international conferences on the humanitarian impact of nuclear weapons held in Oslo, Nayarit and Vienna from 2012 to 2014, where evidence was shared of the catastrophic consequences of a nuclear weapon detonation on human health, the environment, climate change, human displacements and the global economy. SA expressed the hope that, despite the reservations of some States, they would participate in the ongoing discussions on the topic. SA also acknowledged the 1996 *Pelindaba Treaty* which marked Africa as a nuclear weapon-free zone.⁸

5. Other Views

5.1. Political

The President of the General Assembly, Miroslav Lajcak, said that the treaty demonstrated the will of member nations to bring about change. It would also increase public awareness of the risks of the continued existence of nuclear weapons and devices, and would help in achieving the goal of a world in which nuclear weapons existed ‘only in films’. The treaty would be the cornerstone of the non-proliferation regime.⁹

Several speakers at the signing event paid fulsome tribute to the role of civil society in keeping the issue alive. The executive director of the International Campaign to Abolish Nuclear Weapons (ICAN), Beatrice Fihn, said: “We hope that today marks the beginning of the end of the nuclear age. It is beyond question that nuclear weapons violate the laws of war and pose a clear danger to global security. No one believes that indiscriminately killing millions of civilians is acceptable – no matter the circumstance – yet that is what nuclear weapons are designed to do. Today the international community rejected nuclear weapons and made it clear they are unacceptable.”¹⁰ The 33 countries of Latin America and the Caribbean, as a region, also supported the treaty.

5.2. Faith community

Archbishop Paul Gallagher, speaking on behalf of the Holy See, said: “Nuclear arms offer a false sense of security. The uneasy peace promised by

nuclear deterrence has time and time again proved a tragic illusion. Nuclear weapons cannot create a stable and secure world. Peace and international sustainability cannot be founded on mutually assured destruction, or on the threat of annihilation. We must put behind us the nuclear threats, fear, military superiority, ideology and unilateralism that drive proliferation and modernisation efforts and are so reminiscent of the logic of the cold war. Political analysis that relies on nuclear weapons is misleading.” He called for an ethic of responsibility to replace the logic of fear and mistrust that would foster multilateral dialogue and consistent cooperation between all members of the international community. The Archbishop went on to appeal to other States to ratify the treaty and “so demonstrate wisdom, courageous leadership and a commitment to peace and the common good of all.”¹¹

5.3. The Church's historical position

In 2010, as the first calls for this treaty were being made, Pope Benedict XVI said: “...I firmly hope that, during the Nuclear Non-Proliferation Treaty Review Conference to be held this May in New York, concrete decisions will be made towards progressive disarmament, with a view to freeing our planet from nuclear arms.”¹² This speaks to a continuity in Church teaching on the issue, building on a long tradition. In 1963 Pope John XXIII said:

“Nuclear weapons must be banned. A general agreement must be reached on a suitable disarmament program, with an effective system of mutual control. Everyone, however, must realize that, unless this process of disarmament be thoroughgoing and complete, and reach men's very souls, it is impossible to stop the arms race, or to reduce armaments, or, and this is the main thing, ultimately to abolish them entirely. Everyone must sincerely co-operate in the effort to banish fear and the anxious expectation of war from men's minds. But this requires that the fundamental principles upon which peace is based in today's world be replaced by an altogether different one, namely, the realization that true and lasting peace among nations cannot consist in the possession of an equal supply of armaments but only in mutual trust.”¹³

On the 50th anniversary of the Encyclical Letter *Pacem in Terris* (Peace on Earth) Pope John reaffirmed this position: “Nuclear-weapon-free

zones are the best example of trust, confidence and affirmation that peace and security are possible without possessing nuclear weapons."¹⁴

In *Pacem in Terris*, #109 we read:

"We are deeply distressed to see the enormous stocks of armaments that have been, and continue to be, manufactured in the economically more developed countries. This policy is involving a vast outlay of intellectual and material resources, with the result that the people of these countries are saddled with a great burden, while other countries lack the help they need for their economic and social development."¹⁵

In much the same vein, in their 1983 pastoral letter, *The Challenge of Peace*, the Bishops of the USA wrote:

"Deterrence is not an adequate strategy as a long-term basis for peace; it is a transitional strategy

justifiable only in conjunction with resolute determination to pursue arms control and disarmament."¹⁶

6. Conclusion

A close reading of the comments of the Holy See, South Africa, and civil society groups, shows a significant commonality of purpose and a shared commitment to world peace, based on a nuclear weapon-free international regime developed in a fundamentally developmental and human-rights framework. A quick ratification by SA will enhance our reputation as one of the few countries to have turned its back on nuclear weapons, thus setting an example for Africa and – more importantly – for those nations that still contemplate the possibility of nuclear warfare.

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¹<https://www.bing.com/search?q=treaty+prohibiting+nuclear+weapons&q=SC&cvid=ec08dcc2492d4ec8bfff0f52e237912b&cc=ZA&setlang=en-US&first=21&FORM=PERE1>

²<http://catholicdaily.com/2017/09/22/vatican-at-un-nukes-wont-save-us-ndash-lets-look-for-a-better-path/>

³<http://www.dirco.gov.za/docs/2016/un1031.htm>

⁴https://en.wikipedia.org/wiki/Treaty_on_the_Prohibition_of_Nuclear_Weapons

⁵<http://www.dirco.gov.za/docs/2016/un1031.htm>

⁶<http://www.sabc.co.za/news/a/35daa48042af2b55b446f78ba5338786/Zuma-signs-anti-nuclear-weapons-treaty-20170920>

⁷<http://www.dirco.gov.za/docs/2016/un1031.htm>

⁸<http://www.dirco.gov.za/docs/2016/un1031.htm>

⁹<http://www.un.org/pga/72/2017/09/20/high-level-signature-ceremony-for-the-treaty-on-the-prohibition-of-nuclear-weapons/>

¹⁰<http://www.icanw.org/campaign-news/the-united-nations-prohibits-nuclear-weapons/>

¹¹<https://zenit.org/articles/nuclear-arms-give-a-false-sense-of-security-by-archbishop-gallagher-statement-at-the-un/>

¹²<http://www.usccb.org/issues-and-action/human-life-and-dignity/war-and-peace/nuclear-weapons/>

¹³<https://berkeleycenter.georgetown.edu/quotes/john-xxiii-on-nuclear-disarmament>

¹⁴<http://www.news.va/en/news/50-years-after-pacem-in-terris-the-holy-see-insist>

¹⁵<http://www.catholicaustralia.com.au/church-documents/papal-documents/124-pacem-in-terris-1963-pope-john-xxiii>

¹⁶http://www.ccnr.org/pax_christi.html

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